

CHAPTER 201
OCCUPATIONAL THERAPY EXAMINERS

[Prior to 11/16/88, see Health Department[470] Ch 138]

645—201.1(148B) Definitions.

“*ALJ*” means administrative law judge.

“*AOTCB*” means the American Occupational Therapy Certification Board.

“*Approved program or activity*” means a continuing education program meeting standards set forth in these rules which qualifies for approval by the board pursuant to these rules.

“*Board*” means the board of physical and occupational therapy examiners.

“*Department*” means the Iowa department of public health.

“*Examination*” means the AOTCB examination for occupational therapists and for occupational therapy assistants.

“*Hour of continuing education*” means 50 minutes of attendance per clock hour.

“*Licensee*” means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

645—201.2(147,148B) General.

201.2(1) An applicant for a permanent license shall meet the requirements of Iowa Code section 148B.5.

201.2(2) An application for a license shall be upon an official form supplied by the department. The form shall be completed and signed by the applicant and filed with the department with the required fee in the form of a check or money order payable to the Board of Physical and Occupational Therapy Examiners.

201.2(3) The first license fee provides for the initial licensure of persons and is valid through the expiration date of the biennial licensing period during which the license was issued. The renewal licenses are issued for biennial periods.

201.2(4) Licenses issued by the board shall be 8½ by 11 inches in size. Each license issued shall bear the signature of the chairperson of the board of physical and occupational therapy examiners.

201.2(5) Persons desiring information concerning the time and place of meetings of the board, or other information, shall write to Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

201.2(6) An individual board member, following verification that an applicant has completed all components of the licensing process, may temporarily approve an applicant’s license to practice until such time as the full board shall consider the application.

201.2(7) Incomplete applications that have been on file in the board office for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

645—201.3(147,148B,272C) Education requirements.

201.3(1) The applicant for licensure as an occupational therapist shall have completed the requirements for a baccalaureate or master’s degree in occupational therapy in an occupational therapy program accredited by the American Medical Association in collaboration with the American Occupational Therapy Association. The applicant shall also have successfully completed a minimum of six months’ supervised field work experience.

201.3(2) The applicant for licensure as an occupational therapy assistant shall be a graduate of an educational program approved by the American Occupational Therapy Association. The applicant shall have successfully completed a minimum of two months’ supervised field work experience.

645—201.4(147,148B) Examination requirements.

201.4(1) The applicant for licensure as an occupational therapist shall have received a passing score on the certification examination for occupational therapists of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

201.4(2) The applicant for a license as an occupational therapy assistant shall have received a passing score on the certification examination for occupational therapy assistants of the AOTCB as determined by that board. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

645—201.5(147) Application for permanent licensure.

201.5(1) Applications for licensure to practice as an occupational therapist or occupational therapy assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, on an application form furnished by the board. The application shall include the following:

a. Full name, current address, age, date of birth, place of birth and other information as requested on the application form.

b. Official transcript, with school seal of occupational therapy or occupational therapy assistant professional curriculum.

c. A notarized copy of the certificate or diploma indicating degree awarded to the applicant, if the degree is not indicated on the official transcript.

d. A notarized copy of the certification examination results or official letter from AOTCB confirming a passing score.

e. A notarized copy of official document of name change, if applicable.

201.5(2) An applicant who has passed the examination within 12 months of the date of the application shall submit an application as outlined in 201.5(1).

a. An applicant who has passed the examination one to five years prior to the date of the application shall also provide evidence to the board to document either:

(1) Proof of practice of 2080 hours in the last five years, or

(2) Completion of 15 hours, for occupational therapists, or 7.5 hours, for occupational therapy assistants, of clinically applicable continuing education for each year since passing the examination.

b. An applicant who has passed the examination six to ten years prior to the date of the application shall also provide evidence to the board to document either:

(1) Proof of practice of 2080 hours in the last five years, or

(2) Completion of 75 hours, for occupational therapists, or 37.5 hours, for occupational therapy assistants, of clinically applicable continuing education within the last five years, and three months of full-time practice under the supervision of a licensed occupational therapist. This supervised practice must be completed within six months after the date of the application and the supervising occupational therapist must verify in writing completion of three months of full-time supervised practice. While completing the supervised practice, the applicant will be considered unlicensed and shall be supervised as unlicensed personnel. (See 201.13(7), 201.13(8) and 201.13(9).)

The applicant must inform the board of intent to be licensed through this method and must submit the name of the supervising therapist. In the event there is a change in the supervising therapist, the applicant shall submit the name of the new supervisor in writing to the board within seven days after the change in supervision takes place.

c. An applicant who has passed the examination more than ten years prior to the date of the application shall also provide evidence to the board to document proof of practice of 2080 hours in the last five years.

201.5(3) Applicants not meeting all requirements as set out in 201.5(2) will be required to take or retake the certification examination.

201.5(4) If licensed in another state, the applicant shall provide an official statement from the state licensing board of each state in which the applicant has been licensed regarding the status of the applicant's license, including issue date, expiration date, and information regarding any pending or prior disciplinary action.

201.5(5) An applicant for permanent licensure who will be working in Iowa in the scope of occupational therapy prior to licensure shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision of the applicant until the applicant is licensed. (See 201.13(6).) In the event that there is a change in the licensed occupational therapist providing supervision, the applicant shall submit the name of the person providing the supervision in writing to the board within 7 days after the change in supervision takes place. The application must be on file with the board office prior to starting employment and the application shall be completed within 90 days.

a. A nonresident performing occupational therapy services in this state who is not licensed under this chapter, if the services are performed for not more than 30 days in a calendar year in association with an occupational therapist licensed under this chapter, and the nonresident meets the qualifications for licensing under this chapter except for the qualifying examination.

b. A nonresident performing occupational therapy services in the state who is not licensed under this chapter, if the services are performed for not more than 90 days in a calendar year in association with an occupational therapist licensed under Iowa Code chapter 148B.

645—201.6(148B) Limited permit.

201.6(1) A limited permit to practice as an occupational therapist or as an occupational therapy assistant may be granted to persons who have completed the educational and experience requirements to be licensed as an occupational therapist or occupational therapy assistant and are waiting to take the certification examination for the first time.

201.6(2) A limited permit allows a limited permit holder to practice only under the supervision of an Iowa-licensed occupational therapist. Supervision of the limited permit holder is defined in 201.13(272C).

201.6(3) A limited permit shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

201.6(4) An applicant for a limited permit shall submit the limited permit application fee of \$25 and a completed application as set out in 201.2(2) except for the certification examination results.

a. The applicant shall include on the application the name and license number of the occupational therapist who will be providing supervision.

b. It is the responsibility of the limited permit holder to make arrangements to take the examination and to have the official results submitted to the board of physical and occupational therapy examiners and to submit the permanent licensure fee within 30 days of being eligible for permanent licensure.

201.6(5) An applicant for limited permit who will be working in Iowa in the scope of occupational therapy prior to licensure shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision of the applicant until the limited permit is issued. In the event that there is a change in the licensed occupational therapist providing supervision, the applicant shall submit the name of the person providing the supervision in writing to the board within 7 days after the change in supervision takes place. The application must be on file with the board office prior to starting employment and the application shall be completed within 30 days.

201.6(6) The applicant for limited permit shall receive the same supervision as a limited permit holder.

645—201.7(147) License renewal.

201.7(1) Beginning July 1, 1999, a license to practice as an occupational therapist or as an occupational therapy assistant shall expire every two years on the fifteenth day of the birth month. Continuing education requirements shall be completed within the same renewal period for each license holder.

An application and a continuing education report form for renewal of license to practice as an occupational therapist or as an occupational therapy assistant shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

201.7(2) Beginning July 1, 1999, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 201.12(147). Individuals who were issued their initial license within six months of their birth month will not be required to renew their license until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued. Occupational therapists will be required to report 30 hours and occupational therapy assistants 15 hours of continuing education for the first renewal and every renewal thereafter.

201.7(3) Late renewal. If the renewal fees are received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If renewal fees are received more than 30 days after the renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board with the reinstatement fee, the renewal fee and the penalty fee as outlined in rule 201.12(147). Individuals who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

201.7(4) Occupational therapists and occupational therapy assistants who have not fulfilled the requirements for license renewal or an exemption in the required time frame will have a lapsed license and shall not engage in the practice of occupational therapy.

645—201.8(147) Reinstatement of lapsed license. Individuals allowing a license to lapse will be required to reapply for permanent license and may be required to take the certification examination. Occupational therapists and occupational therapy assistants who do not request to be reinstated by means of submitting the current application fee, reinstatement fee, and an application for reinstatement within 30 days after the renewal expiration date may be required to take an examination as determined by the board. Consideration will be given to the length of lapsed license, practicing with lapsed license, and previous violations of board rules. Should an individual continue to practice with a lapsed license, disciplinary action will be taken which may include suspension, revocation or probation.

645—201.9(272C) Exemptions for inactive practitioners. A licensee who is not engaged in the active practice of occupational therapy in the state of Iowa, residing within or without the state of Iowa, may be granted a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of occupational therapy in Iowa without first complying with all regulations governing reinstatement after exemption. (See 201.11(147).) The application for a certificate of exemption shall be submitted upon a form provided by the board.

Individuals who fail to request reinstatement within a five-year period from the date the certificate of exemption was granted shall be considered to have a lapsed license.

645—201.10(272C) Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill them or make the required reports. No waiver or extension of time shall be granted unless written application shall be made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional and the waiver is acceptable to the board. Waivers of the minimum continuing education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived.

645—201.11(147) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of occupational therapy in the state of Iowa, apply for reinstatement by submitting the following to the board:

201.11(1) Completed written application for reinstatement on board-approved form with reinstatement fee and current renewal fee; and

201.11(2) Documentation of one of the following:

a. Proof of completion of a total number of hours of accredited continuing education computed by multiplying 30 for occupational therapists or 15 for occupational therapy assistants for each renewal period the license has been inactive; or

b. Successful completion of the appropriate occupational therapist or occupational therapy assistant certification examination within one year immediately prior to the submission of such application for reinstatement.

c. Proof of 2080 hours of occupational therapy practice in a legal jurisdiction other than Iowa in the past five years.

201.11(3) The board may require successful completion of an oral interview prior to reinstatement.

645—201.12(147) License fees. All fees are nonrefundable.

201.12(1) The application fee for an occupational therapist license is \$100. The application fee for an occupational therapy assistant license is \$90.

201.12(2) The application fee for a limited permit as provided by Iowa Code section 148B.4 is \$25.

201.12(3) The renewal fee for a license to practice as an occupational therapist for a biennial period is \$55. The renewal fee for a license to practice as an occupational therapy assistant for a biennial period is \$45. Biennial renewal fee for a license to practice as an occupational therapist or an occupational therapy assistant for the 1999 renewal cycle only is as follows:

<u>Birth Month</u>	<u>Occupational Therapist Prorated Fee</u>	<u>Occupational Therapy Assistant Prorated Fee</u>
July 1999	\$55	\$45
August 1999	\$57	\$47
September 1999	\$60	\$49
October 1999	\$62	\$51
November 1999	\$64	\$53
December 1999	\$66	\$54
January 2000	\$69	\$56
February 2000	\$71	\$58
March 2000	\$73	\$60
April 2000	\$76	\$62
May 2000	\$78	\$64
June 2000	\$80	\$66

201.12(4) Penalty fee for failure to complete and return the renewal application before the renewal expiration date is \$45 for occupational therapy assistants and \$55 for occupational therapists.

201.12(5) Penalty fee for failure to complete the required continuing education during the renewal period is \$50. Failure to complete and return the continuing education report by the end of the renewal period is \$50.

201.12(6) Reinstatement fee following inactive exemption or lapsed license is \$100.

201.12(7) Fee for a certified statement that a licensee is licensed in Iowa is \$10.

201.12(8) Fee for failure to report, in writing, change of address within 30 days is \$10.

201.12(9) Fee for failure to report, in writing, change of name within 30 days is \$10.

201.12(10) Fee for a returned check is \$15.

201.12(11) Fee for a duplicate or replacement license is \$10.

645—201.13(272C) Supervision.

201.13(1) The occupational therapy assistant and limited permit holder practice occupational therapy under the supervision of an occupational therapist licensed in the state of Iowa.

a. Supervision of the licensed occupational therapy assistant shall include a minimum of four hours per month of on-site and in-sight supervision by the occupational therapist.

b. Supervision of the limited permit holder shall include one-to-one supervision for a minimum of two hours per week by the occupational therapist.

201.13(2) Supervision of the licensed occupational therapy assistant and occupational therapy assistant limited permit holder shall include:

- a.* The evaluation of each patient by the supervising occupational therapist prior to treatment by the licensed occupational therapy assistant or limited permit holder. This time spent in evaluating the patient by the therapist shall not be considered time spent supervising.
- b.* A treatment plan written by the supervising occupational therapist outlining which elements have been delegated to the licensed occupational therapy assistant or limited permit holder.
- c.* Monitoring of patient progress by the supervising occupational therapist.
- d.* Evaluation of treatment plan and determination of treatment termination by supervising occupational therapist.

201.13(3) The occupational therapist holding a limited permit may perform the duties of the occupational therapist under the supervision of an Iowa-licensed occupational therapist, except for providing supervision to an occupational therapy assistant.

201.13(4) The licensed occupational therapy assistant and limited permit holder must designate on a board-approved form the supervising occupational therapist and the facilities within which the occupational therapy assistant or limited permit holder works. Any change in supervision or facility should be reported to the board within seven days after the change takes place.

201.13(5) A supervision plan and documentation of supervision shall be kept by each occupational therapy assistant or limited permit holder and be available for review upon request of the board.

201.13(6) The applicant for permanent license who is already certified and working in the scope of occupational therapy prior to licensure shall receive the same supervision as set out in 201.13(1)“*b*” and 201.13(2) for occupational therapy assistants and 201.13(1)“*b*” and 201.13(3) for occupational therapists.

a. The applicant shall include on the application form the name of the Iowa-licensed occupational therapist who will be providing supervision until the applicant is licensed.

b. The application shall be completed within 90 days.

c. The applicant shall notify the board within seven days of any changes in supervision.

201.13(7) The occupational therapist shall ensure that the occupational therapy assistant, limited permit holder, or applicant is assigned only those duties and responsibilities for which the assistant, limited permit holder or applicant has been specifically trained and is qualified to perform.

201.13(8) When supervising unlicensed personnel not covered under 201.13(1), 201.13(2), 201.13(3) and 201.13(6), the following conditions shall be met:

a. Evaluation of patient by the occupational therapist.

b. Treatment plan determined by the occupational therapist with delegation of specific treatment responsibilities in writing.

c. The occupational therapist shall monitor patient progress, change treatment plan as indicated and determine termination of treatment.

201.13(9) Care rendered by unlicensed personnel shall not be held out as, and shall not be charged as, occupational therapy unless direct in-sight supervision is provided by an occupational therapist.

645—201.14(272C) Continuing education requirements.

201.14(1) The continuing education compliance period shall be each biennium beginning the fifteenth day of the birth month and ending two years later on the fifteenth day of the birth month. The occupational therapist shall complete 30 hours of continuing education each compliance period. The occupational therapy assistant shall complete 15 hours of continuing education each compliance period. For the 1999 renewal cycle only, 38 hours of continuing education will be due for the occupational therapist and 19 hours of continuing education will be due for the occupational therapy assistant by July 1, 1999.

Continuing education hours will return to 30 hours for the occupational therapist and 15 hours for the occupational therapy assistant each biennium at the end of this prorated compliance period.

201.14(2) Compliance with the continuing education requirement is a prerequisite for license renewal in each subsequent two-year period.

201.14(3) Rescinded IAB 7/29/98, effective 9/2/98.

201.14(4) Rescinded IAB 7/29/98, effective 9/2/98.

201.14(5) No carryover credits will be allowed from one biennium to another.

201.14(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—201.15(272C) Standards for approval. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets board standards.

201.15(1) A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:

a. It constitutes an organized program of learning which contributes directly to the professional competency of the licensee; and

b. It pertains to the clinical practice of occupational therapy; and

c. It is conducted by individuals who have special education, training and experience qualifying them as experts concerning the subject matter of the program; and

d. The contents, purpose, objectives and outline given in a time frame are printed in a brochure, manual or paper to demonstrate the intent of the program; and

e. It provides proof of attendance to include the following:

(1) Date, place, course title, presenter(s).

(2) Number of program contact hours.

(3) Official signature of program sponsor.

201.15(2) Continuing education credit may also be granted for the following:

a. A maximum of 15 hours for the occupational therapist and 7.5 hours for the occupational therapy assistant will be granted for presenting professional programs which meet the criteria as set out in 201.15(1). Two hours' credit will be granted for each hour of presentation. A presenter may claim this credit only one time for any single presentation topic.

b. College or university courses relating to the clinical practice of occupational therapy are granted continuing education credit based on the number of credit hours earned.

One semester credit = 10 hours of continuing education credit.

One trimester credit = 8 hours of continuing education credit.

One quarter credit = 7 hours of continuing education credit.

A course description and an official school transcript indicating successful completion of the course must be provided by the licensee to receive credit for an academic course if continuing education is audited.

c. Participation in research or other activities which results in published articles or chapters in a recognized professional publication. Authors will receive up to five hours of continuing education credit per published page. A copy of the article or chapter must be provided by the licensee if continuing education is audited.

d. A maximum of 15 hours for occupational therapists and 7.5 hours for occupational therapy assistants will be allowed per biennium for viewing videotaped presentations and attending in-service training programs of one hour or more if the following criteria are met:

- (1) There is a sponsoring group or agency.
- (2) There is a facilitator or program official present.
- (3) The program official may not be the only attendee.
- (4) The program meets all of the criteria of 201.15(1).

e. Home study courses that have a certificate of completion will be considered for a maximum of 15 hours for occupational therapists and 7.5 hours for occupational therapy assistants per biennium.

201.15(3) The following subject areas will be considered for a maximum of ten hours, for occupational therapists, and five hours, for occupational therapy assistants, of continuing education credit per biennium.

Business-related topics: administration, marketing, government regulations and other like topics.

General health topics: quality assurance, clinical research, CPR, abuse reporting and other like topics.

645—201.16(272C) Reporting continuing education credits.

201.16(1) A report of continuing education activities shall be submitted on a board-approved form with the renewal application by the end of the biennial license renewal period. All continuing education activities submitted must be completed in the continuing education compliance period for which the license was issued as specified in 201.14(1) or a penalty fee will be assessed as outlined in 201.12(5).

201.16(2) Failure to receive a renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal fee by the end of the compliance period.

201.16(3) Review of continuing education reports.

a. After each educational biennium the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

b. Licensees whose renewal license applications are submitted late (after the end of the compliance period) shall be required to submit to an audit of continuing education reports.

c. Any occupational therapist or occupational therapy assistant against whom a complaint is filed may be subject to an audit of continuing education.

d. Occupational therapists and occupational therapy assistants are responsible for keeping on file required documents that can support the continuing education attendance and participation reports submitted to the board for license renewal. These documents shall include a program brochure including the statement of purpose, course objectives, qualification of speakers, program outline with a time frame designation and a certification of attendance. Programs or other educational activities that do not meet board standards will be disallowed. Failure to submit documentation supporting the continuing education report will disqualify the licensee's eligibility for license renewal.

e. The licensee is required to make available to the board upon request documents to support the continuing education activities (as stated in 201.16(3)“*d*”) for auditing purposes for four years.

645—201.17(272C) Hearings. In the event of denial, in whole or part, of credit for continuing education activity, the licensee shall have the right, within 20 days after the sending of the notification of denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or an ALJ designated by the board. If the hearing is conducted by an ALJ, the ALJ shall submit a transcript of the hearing, including exhibits, to the board after the hearing with the proposed decision of the ALJ. The decision of the board or decision of the ALJ after adoption by the board shall be final.

645—201.18(272C) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Physical and Occupational Therapy Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall include complainant's address and telephone number, shall be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

645—201.19(272C) Investigation of complaints or malpractice claims.

201.19(1) Investigation. The chair of the board of physical and occupational therapy examiners may assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the state department of inspections and appeals to investigate the complaint or malpractice claim. The investigating board member or employee of the department of inspections and appeals may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department of inspections and appeals may consult with an officer or assistant attorney general concerning the investigation or evidence produced from the investigation. The investigating board member, if the board member investigates the complaint, or an assistant attorney general if the department investigates the complaint, shall make a written determination whether there is probable cause for a disciplinary hearing. The investigating board member shall not take part in the decision of the board, but may appear as a witness.

201.19(2) Informal discussion. In the course of conducting or directing an investigation, the board may request the licensee to attend a voluntary informal discussion before the board or board committee. The licensee is not required to attend or participate in the informal discussion. An informal discussion constitutes a part of the board's investigation of a pending disciplinary case, and the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing. A board member who participates in an informal discussion is not disqualified from participating in the contested case hearing.

645—201.20(272C) Informal settlement and license denial.

201.20(1) Informal settlement—parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board.

b. The full board shall not be involved in negotiation until presentation of a final, written, signed informal settlement to the full board for approval.

201.20(2) Informal settlement—waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

201.20(3) Informal settlement—board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

201.20(4) Informal settlement—disqualification of designee. A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

201.20(5) License denial.

a. An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at hearing.

b. If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this subrule, the hearing and subsequent procedures shall be held pursuant to the process outlined at rule 645—200.21(272C).

645—201.21(272C) Disciplinary procedure.

201.21(1) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing, the department of public health shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least 10 days before the date of the hearing. If licensees have absented or removed themselves from the state, the notice of hearing and statement of charges shall be so served at least 30 days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee are unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules.

201.21(2) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged. The statement of charges shall specify the statute(s) and rule(s) which are alleged to have been violated.

201.21(3) Legal representation. Every statement of charges and notice of hearing shall be reviewed by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all contested case proceedings before the board.

201.21(4) Continuances. A party has no automatic right to a continuance or delay of the disciplinary hearing. A party may request a continuance of the board no later than seven days prior to the date set for hearing. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances. The board administrator shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail, by telephone, or by any other means by a party seeking a continuance.

201.21(5) Prehearing conference. The presiding officer or hearing officer either on the officer's own motion or at the request of either party may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time, and place of the prehearing conference.

201.21(6) Failure by respondent to appear. If a respondent, upon whom proper notice of hearing has been served, fails to appear at the hearing, the board may proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

201.21(7) Hearing procedure. The board adopts the rules of the department of public health found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearing before the board. The board may authorize an administrative law judge to conduct the hearings, administer oaths, issue subpoenas, and prepare written findings of fact, conclusions of law and decision at the direction of the board. If a majority of the board does not hear the disciplinary proceeding, a recording or a transcript of the proceeding shall be made available to members of the board who did not hear the proceeding.

201.21(8) Application for rehearing. The filing of an application for rehearing is not necessary to exhaust administrative remedies. Within 20 days after the issuance of a final decision, any party may file an application for rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within 20 days after service on the board. Upon rehearing, the board shall consider facts not presented in the original hearing only if:

- a. Such facts arose subsequent to the original proceedings; or
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

201.21(9) Appeal. Any appeal to the district court from disciplinary action of the board or denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court.

201.21(10) Transcript. The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

201.21(11) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate association, the news media and employer.

201.21(12) Hearings open to the public. A hearing of a licensing board concerning a licensee shall be open to the public unless the licensee or the licensee's attorney requests in writing that the hearing be closed to the public.

201.21(13) Reinstatement. Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

a. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

c. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

d. An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law. The order shall be published as provided for in this rule.

201.21(14) Voluntary surrender. The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

645—201.22(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibiting permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Requiring additional education or training.
6. Requiring a reexamination.
7. Ordering a physical or mental evaluation, or ordering alcohol and drug screening within a time specified by the board.
8. Imposing civil penalties not to exceed \$1000.
9. Issuing a citation and warning.
10. Imposing other sanctions allowed by law as may be appropriate.

645—201.23(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- 201.23(1)** The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- 201.23(2)** The facts of the particular violation.
- 201.23(3)** Any extenuating facts or other countervailing considerations.
- 201.23(4)** The number of prior violations or complaints.
- 201.23(5)** The seriousness of prior violations or complaints.
- 201.23(6)** Whether remedial action has been taken.
- 201.23(7)** Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—201.24(272C) Grounds for discipline. the board may impose any of the disciplinary sanctions set forth in rule 201.22(272C), including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee is guilty of any of the following acts or offenses.

- 201.24(1)** All grounds listed in Iowa Code section 147.55.
- 201.24(2)** Violation of the rules promulgated by the board.
- 201.24(3)** Personal disqualifications:
 - a.* Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
 - b.* Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.
- 201.24(4)** Practicing the profession while the license is suspended or lapsed.
- 201.24(5)** Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of physical and occupational therapy examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.
- 201.24(6)** Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

201.24(7) Failure to comply with the following rules of ethical conduct and practice.

a. An occupational therapist or occupational therapy assistant shall not practice outside the scope of the license.

b. When the occupational therapist or occupational therapy assistant does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment, the occupational therapist or occupational therapy assistant is obligated to assist in identifying a professionally qualified licensed practitioner to perform the service.

c. The practice of occupational therapy shall minimally consist of:

- (1) Interpreting all referrals.
- (2) Evaluating each patient.
- (3) Identifying and documenting individual patient's problems and goals.
- (4) Establishing and documenting a plan of care.
- (5) Providing appropriate treatment.
- (6) Determining the appropriate portions of the treatment program to be delegated to assistive personnel.
- (7) Appropriately supervising individuals as described in rule 201.13(272C).
- (8) Providing timely patient reevaluation.
- (9) Maintaining timely and adequate patient records of all occupational therapy activity and patient response.

d. It is the responsibility of the occupational therapist to inform the referring practitioner when any requested treatment procedure is inadvisable or contraindicated. The occupational therapist shall refuse to carry out orders that are inadvisable or contraindicated and advise the referring practitioner as such.

e. Treatment shall not be continued beyond the point of possible benefit to the patient or by treating more frequently than necessary to obtain maximum therapeutic effect.

f. It is unethical for the occupational therapist or occupational therapy assistant to directly or indirectly request, receive, or participate in the dividing, transferring, assigning, rebating, or refunding of an unearned fee or to profit by means of credit or other valuable consideration as an unearned commission, discount, or gratuity in connection with the furnishing of occupational therapy services.

g. The occupational therapist or occupational therapy assistant shall not exercise undue influence on patients to purchase equipment produced or supplied by a company in which the occupational therapist or occupational therapy assistant owns stock or has any other direct or indirect financial interest.

h. Occupational therapists and occupational therapy assistants shall not permit another person to use their licenses for any purpose.

i. An occupational therapist and occupational therapy assistant shall not obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority or sell, prescribe, give away, or administer a controlled substance in the practice of occupational therapy.

j. An occupational therapist and occupational therapy assistant shall not verbally or physically abuse a patient.

k. An occupational therapist and occupational therapy assistant shall not engage in sexual misconduct. Sexual misconduct includes the following:

- (1) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient.
- (2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

201.24(8) Failure to adequately supervise personnel in accordance with the standards for supervision set forth in rule 201.13(272C).

201.24(9) Unethical business practices, consisting of any of the following:

- a.* False or misleading advertising.
- b.* Betrayal of a professional confidence.
- c.* Falsifying a patient's records.

201.24(10) Failure to notify the board of a change of name or address within 30 days after it occurs.

201.24(11) Submission of a false report of continuing education, or failure to submit the required report of continuing education.

201.24(12) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or disciplinary action taken by another state.

201.24(13) Failure to comply with a subpoena issued by the board.

201.24(14) Failure to report to the board as provided in Iowa Code section 272C.9 any violation by another licensee of the reasons for disciplinary action as listed in this rule.

201.24(15) Failure to report to the board as provided in Iowa Code section 272C.9 any violation by an occupational therapist or occupational therapy assistant of the reasons for disciplinary action as listed in this rule.

201.24(16) Obtaining a license by fraud or misrepresentation.

201.24(17) Conviction of a felony related to the practice of occupational therapy or the conviction of any felony that would affect the licensee's ability to practice occupational therapy. A copy of the record of conviction shall be conclusive evidence. Conviction shall include a finding or verdict of guilty, a plea of guilty, an admission of guilt, or a plea of nolo contendere.

201.24(18) Professional incompetency. Professional incompetency includes but is not limited to:

- a.* A substantial lack of knowledge or ability to discharge professional obligations within the occupational therapist's or occupational therapy assistant's practice;

- b.* A substantial deviation by the occupational therapist or occupational therapy assistant from the standards of learning or skill ordinarily possessed and applied by other occupational therapists and occupational therapy assistants in the state of Iowa acting in the same or similar circumstances;

- c.* A failure by an occupational therapist or occupational therapy assistant to exercise in a substantial respect that degree of care which is ordinarily exercised by the average occupational therapist or occupational therapy assistant in the state of Iowa acting in the same or similar circumstances;

- d.* A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of occupational therapy in the state of Iowa.

201.24(19) Inability to practice occupational therapy with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

201.24(20) Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

201.24(21) Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

201.24(22) Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

- a.* Reporting incorrect treatment dates for the purpose of obtaining payment;
- b.* Reporting charges for services not rendered;
- c.* Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
- d.* Aiding a patient in fraudulently obtaining payment from a third-party payer.

201.24(23) Practicing without a current license or practicing when a license is lapsed.

645—201.25(272C) Peer review committees.

201.25(1) A complaint may be assigned to a peer review committee for review, investigation, and report to the board.

201.25(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

201.25(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

201.25(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

645—201.26(21,272C) Conduct of persons attending meetings.

201.26(1) The person presiding at a meeting for the board may exclude a person from an open meeting for behavior that obstructs the meeting.

201.26(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member presiding at the meeting.

These rules are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

- [Filed 5/26/78, Notice 4/5/78—published 6/14/78, effective 7/19/78]
- [Filed 2/8/79, Notice 10/18/78—published 3/7/79, effective 4/13/79]
- [Filed 7/17/79, Notice 5/30/79—published 8/8/79, effective 9/12/79]
- [Filed 1/17/80, Notice 9/5/79—published 2/6/80, effective 3/14/80]
- [Filed 11/25/80, Notice 2/6/80—published 12/24/80, effective 1/31/81]
- [Filed 4/23/81, Notice 3/4/81—published 5/13/81, effective 6/17/81]
- [Filed 10/9/81, Notice 9/2/81—published 10/28/81, effective 12/2/81]
- [Filed 4/9/82, Notice 3/3/82—published 4/28/82, effective 6/2/82]
- [Filed 4/20/83, Notice 11/24/82—published 5/11/83, effective 7/1/83]
- [Filed 7/1/83, Notice 5/11/83—published 7/20/83, effective 8/25/83]
- [Filed 10/6/83, Notice 7/20/83—published 10/26/83, effective 11/30/83]
- [Filed 11/10/83, Notice 9/14/83—published 12/7/83, effective 1/12/84]
- [Filed 4/6/84, Notice 1/4/84—published 4/25/84, effective 5/31/84]
- [Filed 9/7/84, Notice 7/18/84—published 9/26/84, effective 10/31/84]
- [Filed 11/2/84, Notice 9/26/84—published 11/21/84, effective 12/26/84]
- [Filed 4/17/85, Notice 1/30/85—published 5/8/85, effective 6/12/85]
- [Filed 1/10/86, Notice 8/14/85—published 1/29/86, effective 3/6/86]
- [Filed 1/10/86, Notice 9/25/85—published 1/29/86, effective 3/6/86]
- [Filed 4/4/86, Notice 2/26/86—published 4/23/86, effective 5/28/86]
- [Filed 6/11/86, Notice 4/23/86—published 7/2/86, effective 8/6/86]
- [Filed 10/27/88, Notice 9/21/88—published 11/16/88, effective 12/21/88]
- [Filed 1/29/93, Notice 10/28/92—published 2/17/93, effective 3/24/93]
- [Filed 8/13/93, Notice 6/23/93—published 9/1/93, effective 10/6/93]
- [Filed 7/15/94, Notice 4/13/94—published 8/3/94, effective 9/7/94]
- [Filed 1/27/95, Notice 11/9/94—published 2/15/95, effective 3/23/95]
- [Filed emergency 10/4/96 after Notice 7/17/96—published 10/23/96, effective 10/4/96]
- [Filed 7/10/98, Notice 6/3/98—published 7/29/98, effective 9/2/98]